

## Rights of People Served

### Competencies

You should be able to:

- Describe rights of people served and the potential impact of related policies on your work with people served by the system and their families.

### Key Points

- People served by the system have the same rights as everybody else.
- People served have additional rights to dignity, safety, privacy and freedom that are protected in state and federal laws, state rules, and local policies and procedures.

### Reading Questions

1. Why do agencies have client rights policies?
2. Where are rules and regulations regarding client rights found?
3. What are the legal rights as stipulated in G.S. 122C-51 of people you serve?
4. What is meant by the terms: client right, guardian, and legally responsible person?
5. What are the specific rights especially for people served in the MH/DD/SAS system?
6. What is an “emergency restriction?”
7. How do “advance instructions” for both mental health and healthcare help safeguard rights of people served?
8. What are your responsibilities for learning and implementing client rights?



## Rules and Regulations

Rules and regulations about the rights of people with disabilities are found in several places:

### The Law

Federal Law – People being served by our system have the same fundamental rights as any other citizen of the U.S.

State Law, NC statutes – People being served by our system have the same fundamental rights as any other citizen of NC. In addition, there are laws especially for people with disabilities. Many, but not all, are found in the “mental health” or 122-C laws. (Check the NC General Assembly web site for all statutes.)

### The Rules

Client Rights in Community MH/DD/SAS – if a person with disabilities is being served in a community program, he/she has these rights. They are part of the NC Administrative Code (Check the DMH/DD/SAS web site for a copy of these rules.)

Human Rights in State Facilities – if a person with disabilities is being served in a state facility (4 psychiatric hospitals, 5 centers for people with mental retardation, 3 alcohol & drug treatment centers, 3 residential children’s centers, a special care center) he/she has these rights. They are part of the NC Administrative Code. (Check the DMH/DD/SAS web site for a copy of these rules.)

### Policies and Procedures

Your agency’s policies and procedures apply.

### The Law (G.S. 122C-51 through 122C-60, Article 3)

The state’s policy is to assure basic human rights to people with disabilities who are being served by the MH/DD/SA system. These rights include:

Dignity

Privacy

Humane care



- Freedom from mental and physical abuse, neglect, exploitation
- People with disabilities are to live as normally as possible while receiving care and treatment. Everyone receiving services has the right to treatment, including access to medical care and care designed to help them improve their capabilities to live productive lives. Each person also has the right to a written plan explaining the care he/she will receive to develop or restore his/her capabilities.
- Unless legally found incompetent, each adult person with disabilities usually keeps civil rights, including selling property, making purchases, signing contracts, voting, suing, marrying and divorcing. (G.S. 122-58)
- Corporal punishment is never allowed. (G.S. 122-59)
- Physical restraints and seclusion – In the year 2000, a new law was passed which expanded protections of the person being served. The new law emphasizes prevention to avoid use of restraint, safer procedures, and more training for everyone involved. (G.S. 122-60)

## Definition of Terms

### *Client Rights*

Client rights are the policies and procedures established to guarantee the dignity of the person being served and his/her safety, privacy, and freedom. The purpose of client rights is to help ensure that the person served will live as normal a life as possible while receiving services and care designed to meet treatment needs. Client rights policies and procedures serve as a guideline for clients and staff alike.

### *Guardian*

A guardian is a person appointed by the court as a guardian of the person (client) or general guardian. For children, often the appointed guardian assumes the obligations and rights of a parent.

### *Legally Responsible Person (LRP)*

The LRP is the person who has been granted specific authority by law to consent for medical care, including psychiatric care. For adults legally found incompetent,

this is a guardian. For children, the LRP can be a parent, guardian, person in loco parentis, or legal custodian other than a parent.

### **Rights Especially for People Served in the MH/DD/SAS System (G.S. 122C-57)**

#### *Treatment*

Regarding treatment, people served have the right to:

- age-appropriate treatment
- written treatment/habilitation plan within 30 days
- advance information of the potential risks and benefits of the treatment choices

#### *Medication*

Regarding medication, people served have the right to:

- be free from unnecessary medication and from medication being used for punishment, discipline, staff convenience
- have medication administered according to acceptable medical standards
- consent to or refuse any treatment offered
- treatment or medication in an emergency in spite of not consenting to it
- for minors – the parent or legally responsible person must be consulted about discharge
- informed consent before receiving electroshock therapy, experimental drugs or procedures or non-emergency surgery. Such procedures can take place only if the person has given informed consent

People with mental retardation have the right to continuity of residential care. There are protective restrictions in place as to when and how they may be moved from one residence to another. (G.S. 122C-63)

Human rights committees must be in place for state facilities in order to protect the rights of people with disabilities. Client rights committees must be established for local area programs, and they may require their contract providers to have one as well. (NC Code 14V:0504)





## Additional Rights in 24-Hour Facilities

Rights To:	Adults	Children (under 18)
receive medical treatment	•	•
an individualized written discharge plan making recommendations for further services designed to allow the person to live in the community as normally as possible	•	•
send and receive mail; have access to paper, postage, assistance	• sealed	
consult with private lawyer, physician, MH/DD/SAS professional at own expense	•	•
consult with parents or guardian or legal custodian.	•	•
consult with advocate if there is one	•	•
opportunities to mature physically, emotionally, intellectually, socially, vocationally		•
appropriate structure, supervision and control		•
generally, to treatment separate from adults		•
make and receive confidential phone calls (collect or at own expense)	•	•
receive visitors as long as this doesn't interfere with therapy	•	under supervision and as long as it doesn't interfere with school
receive special education and vocational training		•
communicate and meet with anyone he/she chooses under appropriate supervision	•	
visit outside the facility (unless admitted in conjunction with a violent crime, already committed to a Corrections facility or being assessed for "capacity to proceed" in a court case)	•	
be outside daily and allowed to exercise with facilities and equipment several times a week	•	play, recreation, exercise regularly
keep and use personal possessions (unless being assessed for "capacity to proceed" in a court case)	•	under appropriate supervision
participate in religious worship	•	•
keep and spend a reasonable amount of his/her own money	•	access to
keep a driver's license	•	•

It is important to protect the rights of all people served, but even more so for people being served in 24-hour facilities because many aspects of life are not in their control. This chart describes the rights that programs must plan to provide. Some rights must *always* be available, no matter what. Some rights can be restricted, but only under certain circumstances and following strict guidelines.

The goal is to be proactive to avoid restricting rights so that people being served in facilities have the same basic rights and privileges as anyone else. And that's how it should be. Restricting rights is serious business that should be undertaken only by qualified professionals when issues of safety and necessity require such action.

Use of restraint or seclusion is limited by statute and requires various documentation and reporting, (G.S. 122C-60)

Area Programs are required to have a client rights committee pursuant to 10 N.C.A.C. 14V.0504. They may also require their contract providers to have one.

### **Against the Law:**

It is against the law to:

- help a client leave without permission
- offer to or transport a client anywhere without permission
- help or encourage a minor client to engage in a sex offense
- offer to or engage in a sex act with a client
- hide a client who has run away from a facility
- knowingly cause pain or injury or borrow or take personal property

(An employee is expected to report any incident or risk being charged with a crime. The employee's identity is not disclosed except to the investigators, and, if making the report in good faith, the employee is immune from civil liability.)

### **Advance Instructions**

People have a fundamental right to control decisions about their health and mental health care. One way to do this is to through "advance instruction" documents.

#### *Health Care Power of Attorney*

A Health Care Power of Attorney is a witnessed and notarized document that designates someone to make medical decisions for the person when he cannot make them for himself. It becomes effective when a physician states in writing that the person is unable to understand or make health care decisions. It includes provision for mental health power of attorney (see item 4.B). A copy of the Health Care Power of Attorney, G.S. 32A-25 follows.

#### *Advance Instruction for Mental Health Treatment*

This is a written, witnessed, and notarized document in which the person, while "of sound mind," explains his preferences for care and gives someone the authority



to act on his behalf when he might be incapacitated by mental illness. It may include consent to or refusal of mental health treatment. It may also include names and telephone numbers of people to be contacted in crisis situations, situations that may cause a crisis, kinds of help that may be effective, assistance that may help in a residential facility, medications taken and their effects. A copy of the Advance Instruction Form (NC Statute 122C-77) follows.



## Health Care Power of Attorney

### Statutory Form Health Care Power of Attorney. G.S.32A-25.

The use of the following form in the creation of a health care power of attorney is lawful and, when used, it shall meet the requirements of and be construed in accordance with the provisions of this Article: HEALTH CARE POWER OF ATTORNEY

(Notice: This document gives the person you designate your health care agent broad powers to make health care decisions, including mental health treatment decisions, for you. Except to the extent that you express specific limitations or restrictions on the authority of your health care agent, this power includes the power to consent to your doctor not giving treatment or stopping treatment necessary to keep you alive, admit you to a facility, and administer certain treatments and medications. This power exists only as to those health care decisions for which you are unable to give informed consent.

This form does not impose a duty on your health care agent to exercise granted powers, but when a power is exercised, your health care agent will have to use due care to act in your best interests and in accordance with this document. For mental health treatment decisions, your health care agent will act according to how the health care agent believes you would act if you were making the decision.

Because the powers granted by this document are broad and sweeping, you should discuss your wishes concerning life-sustaining procedures, mental health treatment, and other health care decisions with your health care agent.

Use of this form in the creation of a health care power of attorney is lawful and is authorized pursuant to North Carolina law.

However, use of this form is an optional and nonexclusive method for creating a health care power of attorney and North Carolina law does not bar the use of any other or different form of power of attorney for health care that meets the statutory requirement

#### 1. Designation of health care agent.

I, \_\_\_\_\_, being of sound mind, hereby appoint

Name \_\_\_\_\_

Home Address \_\_\_\_\_

Home Telephone Number \_\_\_\_\_

Work Telephone Number \_\_\_\_\_

as my health care attorney-in-fact (herein referred to as my 'health care agent') to act for me and in my name (in any way I could act in person) to make health care decisions for me as authorized in this document.

If the person named as my health care agent is not reasonably available or is unable or unwilling to act as my agent, then I appoint the following persons (each to act alone and successively, in the order named), to serve in that capacity: (Optional)

A. Name \_\_\_\_\_

Home Address \_\_\_\_\_

Home Telephone Number \_\_\_\_\_

Work Telephone Number \_\_\_\_\_

B. Name \_\_\_\_\_







Home Address \_\_\_\_\_

Home Telephone Number \_\_\_\_\_

Work Telephone Number \_\_\_\_\_

Each successor health care agent designated shall be vested with the same power and duties as if originally named as my health care agent.

## **2. Effectiveness of appointment.**

(Notice: This health care power of attorney may be revoked by you at any time in any manner by which you are able to communicate your intent to revoke to your health care agent and your attending physician.)

Absent revocation, the authority granted in this document shall become effective when and if the physician or physicians designated below determine that I lack sufficient understanding or capacity to make or communicate decisions relating to my health care and will continue in effect during my incapacity, until my death. This determination shall be made by the following physician or physicians.

For decisions related to mental health treatment, this determination shall be made by the following physician or eligible psychologist. (You may include here a designation of your choice, including your attending physician or eligible psychologist, or any other physician or eligible psychologist.

You may also name two or more physicians or eligible psychologists, if desired, both of whom must make this determination before the authority granted to the health care agent becomes effective.)

\_\_\_\_\_  
\_\_\_\_\_

## **3. General statement of authority granted.**

Except as indicated in section 4 below, I hereby grant to my health care agent named above full power and authority to make health care decisions, including mental health treatment decisions, on my behalf, including, but not limited to, the following:

- A. To request, review, and receive any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records, and to consent to the disclosure of this information.
- B. To employ or discharge my health care providers.
- C. To consent to and authorize my admission to and discharge from a hospital, nursing or convalescent home, or other institution.
- D. To consent to and authorize my admission to and retention in a facility for the care or treatment of mental illness.
- E. To consent to and authorize the administration of medications for mental health treatment and electroconvulsive treatment (ECT) commonly referred to as 'shock treatment'.
- F. To give consent for, to withdraw consent for, or to withhold consent for, X ray, anesthesia, medication, surgery, and all other diagnostic and treatment procedures ordered by or under the authorization of a licensed physician, dentist, or podiatrist. This authorization specifically includes the power to consent to measures for relief of pain.
- G. To authorize the withholding or withdrawal of life-sustaining procedures when and if my physician determines that I am terminally ill, permanently in a coma, suffering from severe dementia, or am in a persistent vegetative state.

Life- sustaining procedures are those forms of medical care that only serve to artificially prolong the dying process and may include mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and other forms of medical treatment which sustain, restore or supplant vital bodily functions.





Life- sustaining procedures do not include care necessary to provide comfort or alleviate pain.

**I DESIRE THAT MY LIFE NOT BE PROLONGED BY LIFE-SUSTAINING PROCEDURES IF I AM TERMINALLY ILL, PERMANENTLY IN A COMA, SUFFER SEVERE DEMENTIA, OR AM IN A PERSISTENT VEGETATIVE STATE.**

H. To exercise any right I may have to make a disposition of any part or all of my body for medical purposes, to donate my organs, to authorize an autopsy, and to direct the disposition of my remains.

I. To take any lawful actions that may be necessary to carry out these decisions, including the granting of releases of liability to medical providers.

#### **4. Special provisions and limitations.**

(Notice: The above grant of power is intended to be as broad as possible so that your health care agent will have authority to make any decisions you could make to obtain or terminate any type of health care. If you wish to limit the scope of your health care agent's powers, you may do so in this section.)

A. In exercising the authority to make health care decisions on my behalf, the authority of my health care agent is subject to the following special provisions and limitations (Here you may include any specific limitations you deem appropriate such as: your own definition of when life-sustaining treatment should be withheld or discontinued, or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs, or unacceptable to you for any other reason.):

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B. In exercising the authority to make mental health decisions on my behalf, the authority of my health care agent is subject to the following special provisions and limitations. (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority to make only mental health treatment decisions, your own instructions regarding the administration or withholding of psychotropic medications and electroconvulsive treatment (ECT), instructions regarding your admission to and retention in a health care facility for mental health treatment, or instructions to refuse any specific types of treatment that are unacceptable to you):

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C. (Notice: This health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment, executed in accordance with Part 2 of Article 3 of Chapter 122C of the General Statutes, which you may use to state your instructions regarding mental health treatment in the event you lack sufficient understanding or capacity to make or communicate mental health treatment decisions.

Because your health care agent's decisions about decisions must be consistent with any statements you have expressed in an advance instruction, you should indicate here whether you have executed an advance instruction for mental health treatment.):

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### 5. Guardianship provision.

If it becomes necessary for a court to appoint a guardian of my person, I nominate my health care agent acting under this document to be the guardian of my person, to serve without bond or security. The guardian shall act consistently with G.S. 35A- 1201(a)(5).

### 6. Reliance of third parties on health care agent.

A. No person who relies in good faith upon the authority of or any representations by my health care agent shall be liable to me, my estate, my heirs, successors, assigns, or personal representatives, for actions or omissions by my health care agent.

B. The powers conferred on my health care agent by this document may be exercised by my health care agent alone, and my health care agent's signature or act under the authority granted in this document may be accepted by persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. All acts performed in good faith by my health care agent pursuant to this power of attorney are done with my consent and shall have the same validity and effect as if I were present and exercised the powers myself, and shall inure to the benefit of and bind me, my estate, my heirs, successors, assigns, and personal representatives.

The authority of my health care agent pursuant to this power of attorney shall be superior to and binding upon my family, relatives, friends, and others.

### 7. Miscellaneous provisions.

A. I revoke any prior health care power of attorney.

B. My health care agent shall be entitled to sign, execute, deliver, and acknowledge any contract or other document that may be necessary, desirable, convenient, or proper in order to exercise and carry out any of the powers described in this document and to incur reasonable costs on my behalf incident to the exercise of these powers; provided, however, that except as shall be necessary in order to exercise the powers described in this document relating to my health care, my health care agent shall not have any authority over my property or financial affairs.

C. My health care agent and my health care agent's estate, heirs, successors, and assigns are hereby released and forever discharged by me, my estate, my heirs, successors, and assigns and personal representatives from all liability and from all claims or demands of all kinds arising out of the acts or omissions of my health care agent pursuant to this document, except for willful misconduct or gross negligence.

D. No act or omission of my health care agent, or of any other person, institution, or facility acting in good faith in reliance on the authority of my health care agent pursuant to this health care power of attorney shall be considered suicide, nor the cause of my death for any civil or criminal purposes, nor shall it be considered unprofessional conduct or as lack of professional competence. Any person, institution, or facility against whom criminal or civil liability is asserted because of conduct authorized by this health care power of attorney may interpose this document as a defense.

### 8. Signature of principal.

By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full import of this grant of powers to my health care agent.

Signature of Principal: \_\_\_\_\_ Date \_\_\_\_\_

(Seal)



### 9. Signatures of Witnesses.

I hereby state that the Principal, \_\_\_\_\_, being of sound mind, signed the foregoing health care power of attorney in my presence, and that I am not related to the principal by blood or marriage, and I would not be entitled to any portion of the estate of the principal under any existing will or codicil of the principal or as an heir under the Intestate Succession Act, if the principal died on this date without a will.

I also state that I am not the principal's attending physician, nor an employee of the principal's attending physician, nor an employee of the health facility in which the principal is a patient, nor an employee of a nursing home or any group care home where the principal resides.

I further state that I do not have any claim against the principal.

Witness \_\_\_\_\_ Date \_\_\_\_\_

Witness \_\_\_\_\_ Date \_\_\_\_\_

STATE OF NORTH CAROLINA, COUNTY OF \_\_\_\_\_

### CERTIFICATE

I, \_\_\_\_\_, a Notary Public for \_\_\_\_\_ County, North Carolina, hereby certify that \_\_\_\_\_ appeared before me and swore to me and to the witnesses in my presence that this instrument is a health care power of attorney, and that he/she willingly and voluntarily made and executed it as his/her free act and deed for the purposes expressed in it.

I further certify that \_\_\_\_\_ and \_\_\_\_\_, witnesses, appeared before me and swore that they witnessed \_\_\_\_\_ sign the attached health care power of attorney, believing him/her to be of sound mind; and also swore that at the time they witnessed the signing (i) they were not related within the third degree to him/her or his/her spouse, and (ii) they did not know nor have a reasonable expectation that they would be entitled to any portion of his/her estate upon his/her death under any will or codicil thereto then existing or under the Intestate Succession Act as it provided at that time, and (iii) they were not a physician attending him/her, nor an employee of an attending physician, nor an employee of a health facility in which he/she was a patient, nor an employee of a nursing home or any group-care home in which he/she resided, and (iv) they did not have a claim against him/her.

I further certify that I am satisfied as to the genuineness and due execution of the instrument.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary Public \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

(A copy of this form should be given to your health care agent and any alternate named in this power of attorney, and to your physician and family members.) (1991, c. 639, s. 1; 1993, c. 523, s. 3; 1998-198, s. 1.)



## Advance Instruction for Mental Health Treatment

122C-77. Statutory form for advance instruction for mental health treatment.

- (a) This Part shall not be construed to invalidate an advance instruction for mental health treatment that was executed prior to January 1, 1999, and was otherwise valid.
- (b) The use of the following or similar form after the effective date of this Part in the creation of an advance instruction for mental health treatment is lawful, and, when used, it shall specifically meet the requirements and be construed in accordance with the provisions of this Part.

### ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT

I, \_\_\_\_\_, being an adult of sound mind, willfully and voluntarily make this advance instruction for mental health treatment to be followed if it is determined by a physician or eligible psychologist that my ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that I lack the capacity to refuse or consent to mental health treatment. "Mental health treatment" means the process of providing for the physical, emotional, psychological, and social needs of the principal. "Mental health treatment" includes electroconvulsive treatment (ECT), commonly referred to as "shock treatment", treatment of mental illness with psychotropic medication, and admission to and retention in a facility for care or treatment of mental illness. I understand that under G.S. 122C-57, other than for specific exceptions stated there, mental health treatment may not be administered without my express and informed written consent or, if I am incapable of giving my informed consent, the express and informed consent of my legally responsible person, my health care agent named pursuant to a valid health care power of attorney, or my consent expressed in this advance instruction for mental health treatment. I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms may include:

### PSYCHOACTIVE MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health treatment, my instructions regarding psychoactive medications are as follows: (Place initials beside choice.)

\_\_\_\_\_ I consent to the administration of the following medications:

\_\_\_\_\_ I do not consent to the administration of the following medications:

Conditions or limitations:

### ADMISSION TO AND RETENTION IN FACILITY

If I become incapable of giving or withholding informed consent for mental health treatment, my instructions regarding admission to and retention in a health care facility for mental health treatment are as follows: (Place initials beside choice.)

\_\_\_\_\_ I consent to being admitted to a health care facility for mental health treatment. My facility preference is

\_\_\_\_\_ I do not consent to being admitted to a health care facility for mental health treatment. This advance instruction cannot, by law, provide consent to retain me in a facility for more than 10 days.

Conditions or limitations





## ADDITIONAL INSTRUCTIONS

These instructions shall apply during the entire length of my incapacity. In case of mental health crisis, please contact:

1.     Name:  
        Home Address:  
        Home Telephone Number:  
        Work Telephone Number:  
        Relationship to Me:
2.     Name:  
        Home Address:  
        Home Telephone Number:  
        Work Telephone Number:  
        Relationship to Me:
3.     My Physician:  
        Name:  
        Telephone Number:
4.     My Therapist:  
        Name:  
        Telephone Number:

The following may cause me to experience a mental health crisis:

The following may help me avoid a hospitalization:

I generally react to being hospitalized as follows:

Staff of the hospital or crisis unit can help me by doing the following:

I give permission for the following person or people to visit me:

Instructions concerning any other medical interventions, such as electroconvulsive (ECT) treatment (commonly referred to as “shock treatment”):

Other instructions:

\_\_\_\_\_ I have attached an additional sheet of instructions to be followed and considered part of this advance instructions.

## SHARING OF INFORMATION BY PROVIDERS

I understand that the information in this document may be shared by my mental health treatment provider with any other mental health treatment provider who may serve me when necessary to provide treatment in accordance with this advance instruction. Other instructions about sharing of information:

## SIGNATURE OF PRINCIPAL

By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full impact of having made this advance instruction for mental health treatment.

Signature of Principal

Date



## NATURE OF WITNESSES

I hereby state that the principal is personally known to me, that the principal signed or acknowledged the principal's signature on this advance instruction for mental health treatment in my presence, that the principal appears to be of sound mind and not under duress, fraud, or undue influence, and that I am not:

- a. The attending physician or mental health service provider or an employee of the physician or mental health treatment provider;
- b. An owner, operator, or employee of an owner or operator of a health care facility in which the principal is a patient or resident; or
- c. Related within the third degree to the principal or to the principal's spouse.

## AFFIRMATION OF WITNESSES

We affirm that the principal is personally known to us, that the principal signed or acknowledged the principal's signature on this advance instruction for mental health treatment in our presence, that the principal appears to be of sound mind and not under duress, fraud, or undue influence, and that neither of us is:

A person appointed as an attorney-in-fact by this document;

The principal's attending physician or mental health service provider or a relative of the physician or provider;

The owner, operator, or relative of an owner or operator of a facility in which the principal is a patient or resident; or

A person related to the principal by blood, marriage, or adoption.

Witnessed by:

Witness:

Date:

Witness:

Date:

STATE OF NORTH CAROLINA COUNTY OF

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## CERTIFICATION OF NOTARY PUBLIC STATE OF NORTH CAROLINA, COUNTY OF

I, \_\_\_\_\_, a Notary Public for the County cited above in the State of North Carolina, hereby certify that \_\_\_\_\_ appeared before me and swore or affirmed to me and to the witnesses in my presence that this instrument is an advance instruction for mental health treatment, and that he/she willingly and voluntarily made and executed it as his/her free act and deed for the purposes expressed in it.

I further certify that \_\_\_\_\_ and \_\_\_\_\_, witnesses, appeared before me and swore or affirmed that they witnessed \_\_\_\_\_ sign the attached advance instruction for mental health treatment, believing him/her to be of sound mind; and also swore that at the time they witnessed the signing they were not (i) the attending physician or mental health treatment provider or an employee of the physician or mental health treatment provider and (ii) they were not an owner, operator, or employee of an owner or operator of a health care facility in which the principal is a patient or resident, and (iii) they were not related within the third degree to the principal or to the principal's spouse. I further certify that I am satisfied as to the genuineness and due execution of the instrument.

This is the \_\_\_\_\_ day of  
Notary Public  
My Commission expires:





## NOTICE TO PERSON MAKING AN INSTRUCTION FOR MENTAL HEALTH TREATMENT

This is an important legal document. It creates an instruction for mental health treatment. Before signing this document you should know these important facts:

This document allows you to make decisions in advance about certain types of mental health treatment. The instructions you include in this declaration will be followed if a physician or eligible psychologist determines that you are incapable of making and communicating treatment decisions. Otherwise you will be considered capable to give or withhold consent for the treatments. Your instructions may be overridden if you are being held in accordance with civil commitment law.

Under the Health Care Power of Attorney you may also appoint a person as your health care agent to make treatment decisions for you if you become incapable. You have the right to revoke this document at any time you have not been determined to be incapable. **YOU MAY NOT REVOKE THIS ADVANCE INSTRUCTION WHEN YOU ARE FOUND INCAPABLE BY A PHYSICIAN OR OTHER AUTHORIZED MENTAL HEALTH TREATMENT PROVIDER.** A revocation is effective when it is communicated to your attending physician or other provider. The physician or other provider shall note the revocation in your medical record. To be valid, this advance instruction must be signed by two qualified witnesses, personally known to you, who are present when you sign or acknowledge your signature. It must also be acknowledged before a notary public.

## NOTICE TO PHYSICIAN OR OTHER MENTAL HEALTH TREATMENT PROVIDER

Under North Carolina law, a person may use this advance instruction to provide consent for future mental health treatment if the person later becomes incapable of making those decisions. Under the Health Care Power of Attorney the person may also appoint a health care agent to make mental health treatment decisions for the person when incapable. A person is “incapable” when in the opinion of a physician or eligible psychologist the person currently lacks sufficient understanding or capacity to make and communicate mental health treatment decisions. This document becomes effective upon its proper execution and remains valid unless revoked. Upon being presented with this advance instruction, the physician or other provider must make it a part of the person’s medical record. The attending physician or other mental health treatment provider must act in accordance with the statements expressed in the advance instruction when the person is determined to be incapable, unless compliance is not consistent with G.S. 122C-74(g). The physician or other mental health treatment provider shall promptly notify the principal and, if applicable, the health care agent, and document noncompliance with any part of an advance instruction in the principal’s medical record. The physician or other mental health treatment provider may rely upon the authority of a signed, witnessed, dated, and notarized advance instruction, as provided in G.S. 122C-75. [1997-442, s. 2; 1998-198, s. 2; 1998-217, s. 53(a)(b).]



# ICM Part 2

## Confidentiality

### Competencies

You should be able to describe and apply rules and discuss the impact of confidentiality rules on working with people served by the system and their families

### Key Points

- Confidential information is *any* and *all* information relating to an individual that is received in connection with any function (performance of services) of the service provider.
- Generally, confidential information may be released only after a required Consent for Release form has been completed and signed by the client or the person who is legally responsible for the client.
- People who sign Consent for Release forms need to know and understand what they are signing and what the implications are. This is the true meaning of informed consent.
- Case managers are responsible for learning and following confidentiality laws, rules, policies and procedures.

### Reading Questions

1. Why do we have confidentiality rules?
2. What are a case manager's legal responsibilities regarding confidentiality?
3. What are the consequences for not maintaining confidentiality?
4. What kinds of information are subject to confidentiality rules?
5. What are some key questions you can ask to determine whether or not you can disclose information?
6. What is "informed consent?"
7. What should you do if you are not sure about the appropriateness of disclosing information?



## Overview of Confidentiality

### Overview

Federal and state confidentiality laws exist to protect the privacy rights of people served by the system by ensuring that information will not be shared without the informed consent of the person being served. Confidentiality is not absolute. There are legal and ethical exceptions to confidentiality which all case managers must know and apply in order to protect people being served by the system and themselves.

### Confidential Information

Confidential information is any and all information relating to an individual that is received in connection with any function (performance of services) of the service provider. For example, information received by a mental health center in connection with any services to a person receiving services is considered confidential.

“Information” includes, but is not limited to, photographs, tapes, client records, reimbursement records, and clinical files. It also includes information received from an outside source. It does not include statistical information from reports or records that does not identify individual clients directly or indirectly.

### AIDS Information

All information or records that identify a person who has the AIDS virus infection or another disease that requires reporting must be strictly confidential. This information shall not be made public without the written consent of the person or the person’s legal guardian.

### Substance Abuse Information

Federal law restricts the disclosure of patient/client information regarding substance abuse diagnosis or treatment received or acquired by a federally assisted program. Except in limited circumstances, release of confidential information requires consent of the person being served or a court order.

### Required and Permitted Disclosure

Information not related to substance abuse diagnosis or treatment can be shared if or when:

- the person served or his/her legally responsible person agrees in writing
- it is in the person’s best interest to tell the next of kin about the admission or discharge

- the person served wants the information and if it won't be harmful to him/her
- the legally responsible person wants the information, and it won't be harmful to the person with disabilities
- the person runs away from a 24-hour program
- the person or the legally responsible person asks that it be shared with an attorney
- the person's advocate may *always* have access

### **Sharing Information for Reports and Court Proceedings**

Information can be shared in abuse reports and court proceeding under the following circumstances:

- If there is a court order.
- If a facility director decides it is in the person's best interest to petition for involuntary commitment or incompetence.
- If a mental exam is ordered as part of the person's defense in court proceedings,
- As part of admission and commitment hearing.
- As part of the adult person's request that court records as a child be destroyed.
- If the Attorney General's office needs the information as part of its work.
- If you suspect any child or disabled adult is abused, neglected, dependent, exploited or died due to maltreatment.

### **Information May be Shared for Care and Treatment:**

The following are the circumstances and conditions under which information can be shared for reasons related to care or treatment.

- Among area or state facilities and the psychiatric service of UNC Hospitals at Chapel Hill when it is necessary for appropriate and effective care, treatment or habilitation and when not doing so would be harmful to that care, treatment or habilitation.
- With DHHS when it is necessary to coordinate appropriate and effective care, treatment, habilitation or to improve services.

- If the person is examined or committed for outpatient care.
- When a Department of Corrections (DOC) inmate needs mental health care.
- When there is imminent danger to the person or another's health or safety.
- When there is likelihood of a felony or violent misdemeanor.
- When the person needs emergency medical care.
- When there is an advance instruction.
- To someone providing support services.
- In order to get state or federal financial aid for the person.
- If needed by employees, students, consultants or volunteers involved in treatment.
- If the referring physician or psychologist requests it.
- Upon request of next of kin or designated family member with a legitimate role in the treatment or care if the client or legally responsible person has given consent.

### **Sharing Information for Research or Planning**

Information that does not identify clients can be shared with DHHS for research and evaluation of services and with others conducting research if there is a documented need.

### **Deciding How and When to Disclose**

When the record contains substance abuse diagnosis or treatment information, there are strict rules. A written consent must follow a certain format and the court order must indicate the judge specifically considered the substance abuse material and decided that its release was necessary. The Federal regulations do permit disclosure for medical emergency, between an agency and contract provider, and to report abuse. Any decision to disclose information should be carefully analyzed, so you may need to think through the following questions to help you analyze before disclosing.

- Does the information relate to a person served by the facility?

- Is the facility's primary purpose to provide services for the treatment of mental health, developmental disabilities, or substance abuse?
- Was the information received in connection with facility services?
- Does the information identify the person as a substance abuse client?
- Is the program a federally assisted substance abuse program?
- Was the information obtained for the purpose of providing substance abuse diagnosis, treatment, or referral for treatment?
- Does the federal and/or state law permit or require disclosure in the situation presented? If so, who is allowed to receive the information?
- What conditions, if any, must be met before disclosure is made?
- What limits, if any, are there on the scope of information that may be disclosed?

### **Consent for Release of Information**

When consent is required, confidential information may be released only after a required Consent for Release form has been completed and signed by the person being served or by the person who is legally responsible for the person being served. The Consent for Release is valid only for the length of time designated on the form (not to exceed one year) and for the purposes indicated.

### For You

The aunt of a teenager you are serving has asked for a copy of a written report that contains confidential information to give to a physician at the health center. The aunt is the primary caretaker, but not the legal guardian. According to confidentiality rules, should the report be sent? Why or why not?

### **Staff and Others Who Must Maintain Confidentiality**

Confidentiality rules apply to all employees, volunteers, students, or others who have access to confidential information in the following agencies or programs:

- offices of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS)
- alcoholic rehabilitation centers

- state special care center
- area programs and their contract agencies
- regional psychiatric hospitals
- mental retardation centers
- residential programs for emotionally disturbed children
- other public or private agencies that are operated by contract with the Division of MH/DD/SAS

#### For You

Look over the preceding list to answer the following questions:

Are you and your agency among those required to maintain confidentiality?

Are schools required to maintain confidentiality?

Are contracted agencies required to maintain confidentiality?

#### **Penalty for Unauthorized Disclosure**

All staff members who are employed in area and state facilities are subject to suspension, dismissal, or disciplinary action for failure to comply with confidentiality rules. Unauthorized disclosure of confidential information is a misdemeanor. Under state law, offenders are subject to a \$500 fine. Under federal law, offenders are subject to criminal penalties up to \$500 for the first offense and \$5,000 for the second offense.

#### **Security of Confidential Information**

Facilities that maintain records that contain confidential information are required to provide a secure place for storage of those records and to develop policies and procedures regarding access to the information. The facility must also develop procedures to guarantee safe transport or transfer of confidential information. In addition, the agency must develop policies and procedures to guarantee controlled access to information that is electronically transmitted, recorded, or stored via automated data processing systems, word processors, or cordless phones.

#### **Your Responsibility**

As a case manager, you are responsible for learning and following confidentiality policies and procedures of the agency that employs and supervises you. Your agency should have written policies for you to follow. Your supervisor or other appointed staff member will coach you about dealing with issues related to confidentiality.

It is tempting to want to help others by answering their questions or sharing information; however, as someone who has access to confidential information, you must be on your guard to protect a person's right to privacy. If you are in doubt, do not share information until you have checked the policy or have discussed the situation with a supervisor.

While you are duty bound to maintain confidentiality, it is also your responsibility to maintain open communication. Sometimes you may find yourself walking a fine line between protecting privacy and trying to encourage open communication. It is wise to practice polite and friendly ways to tell people that you cannot share the information they requested due to confidentiality regulations. If open communication is needed in order to plan and provide care, you should know the proper procedures to follow to make this happen.

# ICM

## Part 3

### Abuse and Neglect

#### Competencies

You should be able to:

- Define abuse and neglect and related terms.
- Know how to respond when you suspect abuse or neglect.

#### Key Points

- If you suspect that a child or disabled adult is abused, neglected, or died due to maltreatment, you must report it to the local Department of Social Services.

#### Reading Questions

1. What are your responsibilities regarding abuse and neglect?
2. What are the formal definitions of adult and child abuse?
3. What constitutes neglect of adults and children?
4. Who is considered a “caretaker” of adults?
5. Who is considered a “caretaker” of children?





## About Abuse and Neglect

### Child Abuse

If you suspect that a child is abused, neglected, or died due to maltreatment, you must report it to the local Department of Social Services. You are not to investigate. That is Social Services' job. Your job is to make the report in good faith.

### Definitions

#### *Abused child*

A child is considered abused when a parent, guardian, custodian, or caretaker:

- Inflicts or allows a serious physical injury that is not an accident

- Creates or allows a substantial risk of serious physical injury that is not an accident

- Uses or allows cruel or grossly inappropriate procedures or devices to modify behavior

- Commits, permits, or encourages rape, sexual offense, crime against nature, incest, preparation of obscene photographs, slides, or motion pictures of the child, giving the child obscene material, displaying or giving harmful material, promoting prostitution and taking indecent liberties

- Creates or allows to be created serious emotional damage,

- Encourages, directs, or approves of delinquent acts involving moral turpitude

#### *Dependent Child*

A child who needs assistance or placement because there is no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.

#### *Neglected child*

A child who does not receive proper care, supervision, or discipline from his or her parent, guardian, custodian, or caretaker; has been abandoned; is not provided necessary medical care; is not provided necessary remedial care; lives in an environment injurious to welfare; or who has been placed for care or adoption in violation of law.

In determining whether a child is neglected, it is relevant whether that child lives in a home where another child has died as a result of suspected abuse or neglect or lives in a home where another child has been subjected to abuse or neglect by an adult who regularly lives in the home.

#### *Caretaker*

Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a step parent, foster parent, adult member of the juvenile's household, adult relative entrusted with the juvenile's care, or any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility.

"Caretaker" also means any person who has the responsibility for the care of a child in a child care facility and includes any person who has the approval of the care provider to assume responsibility for the children under the care of the care provider.

### **Abuse of Disabled Adults**

If you have "reasonable cause" to believe that a disabled adult is abused, neglected or exploited and needs protective services, you must report it to DSS. You are protected from any civil or criminal liability if you act in good faith.

#### **Definitions**

##### *Disabled adult*

Anybody 18 years of age or over (or emancipated minor) who is physically or mentally incapacitated due to mental retardation, cerebral palsy, epilepsy or autism, organic brain damage, mental or physical illness, or chronic substance abuse.

##### *Abuse*

Willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation by a caretaker of services necessary to maintain mental and physical health. The pain, injury, mental anguish, or deprivation must be willful and inflicted by a caretaker.

### *Caretaker*

Anyone with comprehensive responsibility for an adult's day-to-day well being. The caretaker may be a family member, a volunteer, or receiving payment for providing the service.

Some examples of caretakers are:

1. A person or organization appointed as general guardian, guardian of the person, or guardian of the estate, or to whom the adult has given a comprehensive power of attorney.
2. Someone such as a family member, friend, or neighbor who has informally assumed or been given responsibility for insuring that all of the adult's needs are met, including making decisions for the adult.
3. The operator of a nursing, combination or residential care facility.
4. A state mental health, mental retardation or substance abuse services facility.

### **Not Caretakers**

People or organizations providing specific, limited services to the adult voluntarily or by contract are not considered caretakers. These may assist to a limited degree with the adult's care, but they don't have comprehensive responsibility for the adult's well being. Some examples are in-home aide, adult day care program, home health aide, or a general hospital.

### *Neglect*

A disabled adult who is either living alone and not able to provide for himself the services necessary to maintain his mental or physical health or is not receiving the services from his caretaker.

### *Exploitation*

Illegal or improper use of a disabled adult or his resources for another's profit or advantage. Financial exploitation is only one type to be considered. Others are sexual exploitation and forcing a disabled adult to work without pay. Exploitation does not have to be by the caretaker.

*“In Need of Protective Services”*

Due to his physical or mental incapacity, the person is unable to perform or obtain for himself essential services and there is no able, responsible, and willing person to help.

Since the purpose of adult protective service law is to provide protection to disabled adults who have been abused, neglected or exploited and are in need of protective services, it is not applicable in situations where the person has died or no longer needs protection. For example, if a nursing home resident was abused, but the abuse was reported after her family had intervened and moved her to another facility, there would no longer be a need for protection, and the report could be screened out. If a report is made about a disabled adult who died, and abuse or neglect are alleged as contributing to the death, the report should be referred to the county medical examiner for investigation.

## Abuse and Neglect Definitions

TERMS	DISABLED ADULT	CHILD
Definition of Population	Anybody 18 years of age or over (or emancipated minor) who is physically or mentally incapacitated due to mental retardation, cerebral palsy, epilepsy or autism, organic brain damage, mental or physical illness, or chronic substance abuse.	Anybody under 18 years old and not considered emancipated.
Abuse	Willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation by a caretaker of services necessary to maintain mental and physical health. The pain, injury, mental anguish or deprivation must be willful and inflicted by a caretaker.	<p>When a parent, guardian, custodian, or caretaker:</p> <ul style="list-style-type: none"> <li>Inflicts or allows a serious physical injury that is not an accident</li> <li>Creates or allows a substantial risk of serious physical injury that is not an accident</li> <li>Uses or allows cruel or grossly inappropriate procedures or devices to modify behavior</li> <li>Commits, permits, or encourages rape, sexual offense, crime against nature, incest, preparation of obscene photographs, slides, or motion pictures of the child</li> <li><i>giving the child obscene material, displaying or giving harmful material, promoting prostitution, and taking indecent liberties</i></li> <li>Creates or allows to be created serious emotional damage</li> <li>Encourages, directs, or approves of delinquent acts involving moral turpitude</li> </ul>
Neglect	A disabled adult who is either living alone and not able to provide for himself the services necessary to maintain his mental or physical health or is not receiving the services from his caretaker.	<p>A child who does not receive proper care, supervision, or discipline from his or her parent, guardian, custodian, or caretaker</p> <ul style="list-style-type: none"> <li><i>has been abandoned</i></li> <li><i>is not provided necessary medical care</i></li> <li><i>is not provided necessary remedial care</i></li> <li><i>lives in an environment injurious to welfare</i></li> <li><i>has been placed for care or adoption in violation of law</i></li> </ul>



## TERMS

## DISABLED ADULT

## CHILD

### Exploitation

Illegal or improper use of a disabled adult or his resources for another's profit or advantage. Financial exploitation is only one type to be considered. Others are sexual exploitation and forcing a disabled adult to work without pay.

### Dependent

A child who needs assistance or placement because the child has no parent, guardian, or custodian responsible for the child's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.

### Caretaker

Anyone with comprehensive responsibility for an adult's day-to-day well being. The caretaker may be a family member, a volunteer, or receiving payment for providing the service.

Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a child in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the child's household, an adult relative entrusted with the juvenile's care, or any person such as a house parent or cottage parent who has primary responsibility for supervising a child's health and welfare in a residential child care facility or residential educational facility. "Caretaker" also means any person who has the responsibility for the care of a juvenile in a child care facility and includes any person who has the approval of the care provider to assume responsibility for the children under the care of the care provider.

### "in need of protective services"

Due to his physical or mental incapacity, the person is unable to perform or obtain for himself essential services and there is no able, responsible, and willing person to help.



## Signs of Abuse

### SEXUAL ABUSE

#### Physical Signs

- difficulty walking or sitting
- torn, stained or bloody underclothing
- pain or itching in genital area
- bruises or bleeding in external genitalia, vaginal or anal areas
- venereal disease, especially in pre-teens
- pregnancy

#### Behavioral Signs

- unwilling to change for gym or participate in physical education class
- withdrawal, fantasy or infantile behavior
- bizarre, sophisticated, or unusual sexual behavior or knowledge
- poor peer relationships
- delinquent or runaway
- reports sexual assault by caretaker

### PHYSICAL ABUSE

#### Physical Signs

- Unexplained bruises and welts:
- on face, lips, mouth
  - on torso, back, buttocks, thighs
  - clustered, forming regular patterns
  - reflecting shape of article used to inflict (electric cord, belt buckle)
  - on several different surface areas
  - regularly appear after absence, weekend or vacation

- Unexplained burns:
- cigar, cigarette burns, especially on soles, palms, back or buttocks
  - immersion burns (sock-like, glove-like, doughnut shaped on buttocks or genitalia)
  - patterned like electric burner, iron, etc.
  - rope burns on arms, legs, neck or torso

- Unexplained fractures:
- to skull, nose, facial structure
  - in various stages of healing
  - multiple or spiral fractures

- Unexplained lacerations or abrasions:
- to mouth, lips, gums, eyes
  - to external genitalia

#### Behavioral Signs

- apprehensive about adult contacts
- apprehensive when other children cry
- behavioral extremes: aggressiveness and withdrawal
- afraid of parents or caregivers
- afraid to go home
- reports injury by parents or caregivers



## Getting Ready to Explain Advance Instruction

List vocabulary you think might need to be defined.

List key concepts you think will need to be explained.

List questions you think might be asked.

List specific hurdles (e.g., resistance, confusion) and how you might address them.

Hurdles

Strategies to Address Them





## Confidential? You Decide

Read each hypothetical situation and answer the questions regarding confidentiality.

### Situation 1

You are a case manager attending George's placement meeting. There is an expectation that George's mother will provide transportation. You know that her ability to provide consistent transportation is very doubtful because she has AIDS and often is too ill to drive. You have gotten the impression from other committee members that they think she is unreliable and doesn't care about her child's welfare. You want to clear up matters and make a better transportation plan for George.

1. Should you share the information about George's mother under these circumstances? Why or why not?

### Situation 2

Kelly had a prolonged seizure in the parking lot of the mall during a field trip. She was taken to the hospital in an ambulance. Kelly was disoriented and had trouble breathing after her seizure. The attending doctor asked you for information about her medical and family history.

2. Should you answer the physicians questions about Kelly? Why or why not?

### Situation 3

You are approached at a dinner party by a friend and co-worker who says, "I hear through the grapevine that you're the lucky one who had Peter W. added to your caseload."

3. Is it okay to confirm that you have Peter in your group? Why or why not?

### Situation 4

Tammy is the parent of an adolescent with whom you are working. Tammy has a reputation for being very demanding and hard to handle. Today she is upset because she thinks her son has been "underserved" and "mistreated." She wants to see his records immediately.

4. Should you show Tammy the records she has requested? Why or why not?





### **Situation 5**

Lester's file contains information about his drug abuse treatment. The court has ordered you to testify about Lester's drug abuse in a criminal case against him.

5. What series of questions can you ask yourself or a supervisor to determine whether or not it is appropriate to disclose information about Lester's drug abuse?

### **Situation 6**

A mental health therapist who will be helping Dorita when she moves to her new community next month has asked to see Dorita's records. Dorita's legal guardian does not like the new therapist and does not want him to see Dorita's records. The therapist argues that he must see the records in order to develop an effective plan for Dorita when she moves to the western part of the state.

6. Should the agency share the information with the therapist? Why or why not?

### **Situation 7**

Over several months you have noticed and documented a pattern of bruises and withdrawal symptoms that have led you to suspect that Carter is being abused at home.

7. Under these circumstances, should you share confidential information with Social Services? Why or why not?

### **Situation 8**

Barbara's father is complaining that the agency uses confidentiality as an "excuse" to avoid sharing information so he won't "make trouble" for them.

8. How would you respond to Barbara's father?
9. Why do you think some people have the impression that agencies use "confidentiality" as an excuse to not share information?